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LOCAL AGENCY EMPLOYEE IN RESPONSIBLE CHARGE

I. BACKGROUND

As an area of increased emphasis, local agencies are required to designate a “Local Agency Employee in Responsible Charge.”

In the Caltrans Local Assistance Procedures Manual (LAPM), there are several sections that indicate, imply or infer that an Architectural and Engineering (A&E) consultant, whether procured as a retained Agency Engineer or in a project-specific engineering role may fulfill this requirement.

The intent of this Office Bulletin provides for the clarification, definition, and the detailed roles of the “Local Agency Employee in Responsible Charge” as applied to Federal-Aid and State-Funded transportation infrastructure projects.

II. POLICY

This Office Bulletin supersedes portions of LAPM Chapters 15 and 16 that do not correctly state that the local agency must provide a full-time employee (not just a consultant) to be in responsible charge of, and maintain a level of engagement in, each project.

Pursuant to 23 CFR 635.105(c)(4),

In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

Also, pursuant to 23 CFR 172.9 (d),

Contract administration and monitoring—(1) Responsible charge. A full-time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project. While an independent consultant may be procured to serve in a program or project management support role, as specified in §172.7(b)(5), or to provide technical assistance in review and acceptance of engineering and design related services performed and products developed by other consultants, the contracting agency shall designate a public employee as being in responsible charge. A public employee may serve in responsible charge of multiple projects and contracting agencies may use multiple public employees to fulfill monitoring responsibilities. The term responsible charge is intended to be applied only in the context defined within this regulation. It may or may not correspond to its usage in State laws regulating the licensure and/or conduct of professional engineers. The public employee's responsibilities shall include:

(i) Administering inherently governmental activities including, but not limited to, contract negotiation, contract payment, and evaluation of compliance, performance, and quality of services provided by consultant;

(ii) Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;



- (iii) Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;*
- (iv) Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;*
- (v) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;*
- (vi) Evaluating and participating in decisions for contract modifications; and*
- (vii) Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.333.*

As such, this individual must be employed directly by the local agency who is the direct recipient of Federal or State funds. A consulting firm that is on retainer as the City Engineer or a project specific consultant (serving as the Project Manager, Construction Resident Engineer or other role) may not fill the role as the “Local Agency Employee in Responsible Charge”.

The regulation is silent about engineering credentials. Thus, the Local Agency Employee in Responsible Charge need not be an Engineer.

The regulations do not restrict an agency’s organizational authority over the person designated in “responsible charge”, and the regulations do not preclude sharing of these duties and functions among a number of public agency employees. The regulations also do not preclude one employee from having responsible charge of several projects and directing project managers assigned to specific projects.

The above federal regulation is already incorporated into Article 1 of the Administering Agency-State Master Agreement for Federal-Aid and State Funded Projects. Within these agreements it states, “ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT.”

This policy applies to all infrastructure projects receiving Federal-aid or State funds for any phase of work administered by a local public agency.

The failure of a local agency to provide an Employee in Responsible Charge will result in the loss of Federal and/or State funding on the project.

III. PROCEDURE

While consultants may perform project management, supervision and inspection work, the local agency shall provide a full-time employee of the local agency to be in responsible charge of each transportation infrastructure project.

Various exhibits in the Local Assistance Procedures Manual will be updated to reflect this designation/requirement.

The Caltrans Construction Oversight Engineers (COEs) will be responsible for oversight on this issue, through their ongoing construction reviews and corresponding checklists. This requirement will also be checked for compliance by the Office of Implementation as part of the procedure for issuing a locode/master agreement to new agencies.



IV. APPLICABILITY/IMPACTS

This policy applies to all infrastructure projects receiving Federal-aid or State funds for any phase of work administered by a local public agency. Non-infrastructure projects are not considered to be a part of this Office Bulletin and may be addressed at a later time.

Approved: Original Signed By 6/30/2015
Mike Giuliano, Acting Chief Date
Office of Project Oversight

Approved: Original Signed By 6/30/2015
Winton Emmett, Chief Date
Office of Implementation, North